

IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH, IN AND FOR
UTAH COUNTY.

Provo Reservoir company,
A Corporation
Plaintiff

Vs.

Provo City, Lincoln School District,
The Provo Bench Canal and Irrigation
Company, The West Union Canal
Company, and Pauline Schemensky, Stephen
Jones, E.T. Carter, Amos Carter, Permellia
Young, D.G. Calder, J.E. Smith, Owen A.
Baum, Joseph T. Carter, Edith R. Buss,
Wilford Penrod, William Gammon, Abram
L. Smith, A.L. Penrod, J.M. Buckner,
T.J. Smith, W.F. Richins, B.F. Alger, Clara
M. Stubbs, J.C. Ivie, Ann Carter, Thomas
Thornley, John C. Carter, D.W. Baum,
Richard Carter, D.N. Greer, Leo Baum,
D.N. Penrod, Leo E. Smith, B.W. Baum,
A.L. Tanner, Eliza Carter, as administratrix of the
estate of Aaron Carter, deceased;
Cora A Shirts, as administratrix of the
state of Benjamin Shirts, deceased, E.L.
Dodder, J.W. Smith, and Lettie York,
jointly, as members of a voluntary associ-
ation not incorporated, under the name
and style of the Smith Ditch Company,
and also as individual tenants in common
in the Smith Ditch and the rights to the
use of water therein. Defendants.

Now comes the West Union Canal Company and Pauline Schemenskie,
Stephen Jones, E.T. Carter, Amos Carter, Permellia Young, D.G. Calder,
J.E. Smith, Owen A. Baum, Joseph T. Carter, Edith R. Buss, Wilford
Penrod, William Gammon, Abram L. Smith, A.L. Penrod, J.M. Buckner,
T.J. Smith, W.F. Richins, B.F. Alger, Clara M. Stubbs, J.C. Ivie,
Ann Carter, Thomas Thornley, John H. Carter, D.W. Baum, Richard Carter

✓ D.N. Greer, ✓ Leo Baum, ✓ D.N. Penrod, ✓ Leo E. Smith, ✓ B.W. Baum, ✓ A.L. Tanner, ✓ Eliza ✓ Carter, as administratrix of the estate of Aaron ✓ Carter deceased; ✓ Cora A. Shirts, as administratrix of the estate of Benjamin ✓ Shirts, deceased; ✓ E.L. Dodder, ✓ J.W. Smith, and ✓ Lettie York, jointly, as members of a voluntary association not incorporated under the name and style of the Smith Ditch Company, and also as individual tenants in common in the Smith Ditch and the rights to the use of water therein some of the defendants herein, in the above entitled action and make their answer to the said plaintiff's complaint for their selves alone, and not for any one or more of the pther defendants, and admit, deny, and allege as follows, to-wit;

1

Admit the allegations in paragraphs from 1 to 29 inclusive.

11

in paragraphs
As to the allegations from 29 (A) to 29 (C) inclusive, these defendants have not sufficient knowledge or information to form a belief and therefore deny it.

111

Admit paragraph 29 (D).

1V

As to the statements contained in paragraph 29 (E) to paragraph 33 inclusive, these defendants have not sufficient knowledge to form a belief and therefore deny it.

V

The defendants admit paragraphs 34 and 35.

VI

As to paragraph 36, these defendants allege, that they have no sufficient knowledge or information to form a belief except as herein after set forth and therefore deny it.

VII

As to the allegations in paragraph 37, defendants allege, that they have not sufficient knowledge or information to form a belief except as hereinafter set forth and therefore deny it.

VIII

As to allegations in paragraphs 38 and 39, defendants allege, that they have not sufficient knowledge or information on which to form a belief except as hereinafter set forth and therefore deny it.

That the said defendants, The West Union Canal Company, and the defendants above named, composing the Smith Ditch Company, for a further and affirmative defence allege:

That on the 5th day of February, A.D. 1902, in a case then pending in the District Court of the Fourth Judicial District of the State of Utah, in and for Utah County, wherein Provo City, et al, were plaintiffs, and the West Union Canal Company, et al, were defendants, a certain decree was rendered, commonly known as the "Morse Decree" which decree adjudicated the several water rights of the parties to the said action, among others, those of these defendants, and awarded to them a certain amount of water at different stages of the amount of water in Provo River, which decree is hereby referred to and as far as applicable to the plaintiff and these defendants, is made a part of this answer.

X

That by mutual agreement and stipulation by and between the said plaintiff and these defendants, these defendants are accorded the rights awarded to them by said decree, subject, however, only to the terms of a decree of this Court made and entered on the 26th day of January, 1907, and commonly known as the "Chidester Decree", wherein the said decree changes in any manner the rights of these defendants as given to them by the said "Morse Decree" and which "Chidester Decree" is hereby referred to in so far as it affects the rights of this plaintiff and these defendants, it is hereby made a part of this answer.

WHEREFORE, said defendants, The West Union Canal Company and the Smith Ditch Company, pray judgment that they may be granted and have the rights to the use of the water awarded to it by said "Morse Decree" and particularly as follows to-wit; that when the water of said Provo River at and near the mouth of Provo Canyon exceeds 15000 cubic feet of water per minute that these defendants be awarded their portion of the said water awarded to them by said "Morse Decree" to the amount of .1175 of the water in said River.

That when the volume of water in Provo River near and below the mouth of Provo Canyon, in Utah County, becomes reduced in quantity, at said point, to a volume not exceeding 15000 cubic feet per minute and until the same becomes reduced in quantity, at said point, to a

volume not exceeding 12000 cubic feet of water per minute, these defendants shall be entitled to the following proportions thereof to-wit: The West Union Canal Company and the Smith Ditch Company .1185. That when the water of said Provo River at and near the mouth of Provo Canyon does not exceed 12000 cubic feet per minute that these defendants be awarded their portion of the said water ~~and~~ awarded to them by the said "Morse Decree" to the amount of .1265. And that the defendants recover their costs.

Alfred L. Booth

State of Utah
SS
County of Utah

L. J. Nuttall being first duly sworn on his oath says:
that he is an officer, to-wit, *The Secretary* of the said
defendants, The West Union Canal Company and The Smith Ditch Company
that he has read the foregoing answer and knows the contents thereof
and that the same is true of his own knowledge except as to those
matters stated on his information and belief and as to those matters
he believes it to be true.

L. J. Nuttall

Subscribed and sworn to before me this *January* 22 day of ~~Jan~~, 1915.

Alfred L. Booth

Notary Public



My Commission Expires *April 25, 1915*

No 2888
Dist Court
Utah Co
Prow Reservoir Co
vs
Prow City et al
Separate answers of
West Union Canal Co

Recd copy this 25th
day of Jan'y 1915
John Evans
Atty for Plaintiff

IN DIST. COURT
UTAH CO., UTAH.
FILED
JAN 25 1915
C. R. Ferguson, Clerk.
M. R. Strain, Deputy.

J. E. Booth
Atty for West